

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICARDO LEE AGUILAR

Case No. C09-5532RBL/JRC

Plaintiff,

REPORT AND RECOMMENDATION

CORRECTIONAL OFFICER ERIC
ROBERTSON, *et al.*,

NOTED FOR:
January 15, 2010

Defendants.

This Civil Rights Action filed pursuant to 42 U.S.C. § 1983 has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Before the court is plaintiff's motion for default (Dkt. # 9). The court has considered the file and no defendant is in default. Therefore, the motion should be DENIED.

The court ordered the Marshal's Service to attempt service by mail in this action on September 21, 2009 (Dkt. # 4). The Marshal's Service did not mail the service packet to defendant Waddington until November 10, 2009 (Dkt. # 7). Defendant Waddington timely returned a waiver of service which was dated November 27, 2009.

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The defendant has sixty days from November 10, 2009, or until January 12, 2010 to file an answer or motion regarding this case. As the only defendant to acknowledge service to date is not in default the motion should be DENIED.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen days (14) days from service of this Report and Recommendation to file written objections. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on January 15, 2010, as noted in the caption.

Dated this 14th day of December, 2009.

J. K. Ward (matua)

J. Richard Creatura
United States Magistrate Judge